

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201504227	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/26/2015 4:30 PM	Location of Incident: 154 West 132nd Street	Precinct: 32	18 Mo. SOL 11/26/2016	EO SOL 11/26/2016	
Date/Time CV Reported Tue, 05/26/2015 8:49 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 05/26/2015 8:49 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Michael Vento	05566	920937	032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Woo	28328	954431	PBMN
2. POM Derek Pasolini	26556	954217	PBMN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Vento	Abuse: Sgt. Michael Vento stopped § 87(2)(b)	
B.SGT Michael Vento	Abuse: Sgt. Michael Vento frisked § 87(2)(b)	
C.SGT Michael Vento	Abuse: Sgt. Michael Vento searched § 87(2)(b)	
D.SGT Michael Vento	Discourtesy: Sgt. Michael Vento spoke rudely to § 87(2)(b)	
E.SGT Michael Vento	Abuse: Sgt. Michael Vento authorized the issuance of a summons to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint online with the CCRB on May 26, 2015.

On May 26, 2015, at approximately 4:30 p.m., PO Derek Pasolini and PO John Woo of Patrol Borough Manhattan North and Sgt. Michael Vento of the 32nd Precinct approached § 87(2)(b) as he sat on the steps of an abandoned building at 154 West 132nd Street in Manhattan. Sgt. Vento frisked § 87(2)(b) as soon as the officers approached him (**Allegations A and B**). Sgt. Vento then searched § 87(2)(b) by placing his hands inside of § 87(2)(b)'s pockets and removing his belongings (**Allegation C**). Sgt. Vento informed § 87(2)(b) that he would be issued a summons for an unspecified offense and handcuffed him. At this time, Sgt. Vento instructed PO Woo to frisk and search § 87(2)(b) for a second time, and PO Woo complied with Sgt. Vento's command. As the officers escorted § 87(2)(b) to their police vehicle, § 87(2)(b) complained that his handcuffs were too tight, and Sgt. Vento said, "Fuck you" (**Allegation D**). The officers transported § 87(2)(b) to the 32nd Precinct stationhouse where PO Pasolini issued him a disorderly conduct summons for obstructing pedestrian traffic (**Allegation E**). § 87(2)(b) was then released (Board Review 01).

Video footage was obtained from surveillance cameras across the street from the incident location, but this footage did not display the incident.

Mediation, Civil and Criminal Histories

§ 87(2)(b)'s complaint was unsuitable for mediation due to § 87(2)(b)'s stated desire to file a lawsuit against the City of New York regarding the incident. On June 17, 2015, a notice of claim request was submitted to the Comptroller's Office, and the results of the request will be added to the case file upon its receipt at the CCRB. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

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§ 87(2)(b)'s disorderly conduct summons from this incident was dismissed in court.

Civilian and Officer CCRB Histories

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Sgt. Vento has been a member of the NYPD for 17 years and has been the subject of four prior CCRB complaints involving six allegations, none of which were substantiated. Three of these six allegations were allegations of frisks and/or searches of a person, but all of these allegations were unsubstantiated or truncated. § 87(2)(g)

§ 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Sgt. Michael Vento stopped § 87(2)(b)

Allegation B – Abuse of Authority: Sgt. Michael Vento frisked § 87(2)(b)

Allegation C – Abuse of Authority: Sgt. Michael Vento searched § 87(2)(b)

Allegation D – Discourtesy: Sgt. Vento spoke rudely to § 87(2)(b)

It is undisputed by all parties that Sgt. Vento, PO Pasolini, and PO Woo approached § 87(2)(b) as he smoked a cigarette in front of an abandoned building at 154 West 132nd Street in Manhattan. It is undisputed that the officers believed § 87(2)(b) was smoking a marijuana cigarette because of the small size of the cigarette and the manner in which he held it. It is undisputed that upon their immediate approach, the officers determined that there was no odor of marijuana and that § 87(2)(b) was simply smoking a cigarette. It is undisputed that § 87(2)(b) was frisked and searched at the incident location, but it is in dispute as to when § 87(2)(b)'s frisk and search took place. It is undisputed that there was no crowd gathered and that § 87(2)(b) did not cause any inconvenience to the public (Board Review 01 and 04-06).

§ 87(2)(b) alleged that Sgt. Vento immediately frisked him upon the officers' approach by feeling the outside of his clothing between his legs, along his waistband, and on his chest and back (Board Review 01). Sgt. Vento then searched him by placing his hands into his pockets and removing his keys, cell phone, and letters. Following these actions, Sgt. Vento handcuffed § 87(2)(b) and informed him that he would be issued a summons for an unspecified offense. After § 87(2)(b) was placed in handcuffs, Sgt. Vento allegedly instructed PO Woo to frisk and search § 87(2)(b) for a second time, and PO Woo did so. § 87(2)(b) asked the officers to loosen the handcuffs, and in response, Sgt. Vento used the expletive "fuck" towards him approximately one or two times. § 87(2)(b) was unsure of Sgt. Vento's exact phrasing but stated that Sgt. Vento said something to the effect of "fuck you." The officers then escorted § 87(2)(b) to the 32nd Precinct stationhouse where he was issued a disorderly conduct summons for obstructing pedestrian traffic (discussed in **Allegation D**). Upon his release from the stationhouse with his summons, PO Pasolini informed § 87(2)(b) that the officers thought he was smoking marijuana cigarette.

Upon their approach, the officers immediately determined that § 87(2)(b) was not smoking marijuana (Board Review 04-06). PO Pasolini examined the cigarette and concluded that it was not a marijuana cigarette. All of the officers denied that a frisk and search took place from the outset of the interaction. Sgt. Vento and PO Pasolini stated that the officers requested § 87(2)(b)'s identification at this time to verify his place of residence and that § 87(2)(b) refused to leave the location after repeated requests because he disputed his stop and the reason he needed to leave. At this time, Sgt. Vento decided to remove § 87(2)(b) to the 32nd Precinct stationhouse to issue him a disorderly conduct summons for obstructing pedestrian traffic.

Sgt. Vento acknowledged frisking and searching § 87(2)(b) incident to his being handcuffed prior to being removed to the 32nd Precinct stationhouse. Sgt. Vento and PO Woo both stated that § 87(2)(b) asked the officers to loosen his handcuffs and that he was told that the handcuffs would be loosened at the stationhouse. Sgt. Vento denied saying, "Fuck you," to § 87(2)(b) and PO Pasolini and PO Woo corroborated this.

According to *People v. DeBour*, reasonable suspicion of criminality is required for a stop. In addition, an officer must possess reasonable suspicion that he is in danger by virtue of the individual being armed in order to frisk that individual, and an officer must have probable cause to perform a search of a person (Board Review 10). Patrol Guide Procedure 203-09 requires that officers be courteous and respectful (Board Review 11).

§ 87(2)(g)

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Allegation E – Abuse of Authority: Sgt. Michael Vento authorized the issuance of a summons to § 87(2)(b)

It is undisputed that Sgt. Vento authorized the issuance of a disorderly conduct summons to § 87(2)(b) for obstructing pedestrian traffic (Board Review 01 and 04-06).

During § 87(2)(b)'s frisk and search, § 87(2)(b) stated that Sgt. Vento asked him why he was sitting on the steps of the abandoned building at the incident location (Board Review 01). Sgt. Vento also asked if § 87(2)(b) lived at the incident location. In response, § 87(2)(b) told Sgt. Vento that he previously lived across the street from the incident location and was just smoking a cigarette on the steps of the abandoned building. § 87(2)(b) asked Sgt. Vento why he frisked and searched him, but Sgt. Vento did not respond to these questions initially. Sgt. Vento then handcuffed § 87(2)(b) and informed him that he would be issued a summons for an unspecified offense. Sgt. Vento placed § 87(2)(b) in the officers' vehicle and escorted him to the 32nd Precinct stationhouse where PO Pasolini issued him a disorderly conduct summons for obstructing pedestrian traffic. PO Pasolini also told § 87(2)(b) that the officers initially believed that he was smoking a marijuana cigarette.

According to the officers, Sgt. Vento determined that § 87(2)(b) did not live at the incident location after examining his identification and questioning him (Board Review 04-06). Sgt. Vento decided to issue § 87(2)(b) a disorderly conduct summons for obstructing pedestrian traffic after § 87(2)(b) refused to leave the incident location upon multiple commands from Sgt. Vento. Sgt. Vento and PO Pasolini stated that the officers told § 87(2)(b) to leave the location because § 87(2)(b) did not reside there, and Sgt. Vento added that he also told § 87(2)(b) to leave because he was blocking the sidewalk. Sgt. Vento and PO Pasolini stated that they decided to issue § 87(2)(b) a disorderly conduct summons for obstructing pedestrian traffic because § 87(2)(b)

§ 87(2)(b) refused to comply with the officers' commands to leave the location. PO Woo stated that Sgt. Vento decided to issue the summons to § 87(2)(b) because civilians were forced to maneuver around § 87(2)(b) and the officers while they stood on the sidewalk.

Throughout his conversation with the officers, § 87(2)(b) spoke to the officers with a raised voice and complained that they were wasting taxpayer money (Board Review 04-06). PO Pasolini described § 87(2)(b)'s demeanor as "combative" and "agitated." PO Woo also stated that § 87(2)(b) used the word "fuck" towards the officers, but PO Woo did not recall the context of this comment. § 87(2)(b) confirmed that he spoke to the officers with a raised voice and stated that he was "upset" during the incident (Board Review 01).

§ 87(2)(b) and PO Pasolini stated that approximately two to three other civilians stood a few houses away from the incident, and they both stated that none of these civilians interacted with them in any way during the incident beyond looking towards the incident location (Board Review 01 and 04). Neither PO Pasolini nor § 87(2)(b) observed any other civilian in the vicinity of the incident during or prior to their interaction (Board Review 01 and 04).

Prior to the officers' approach, Sgt. Vento stated that he observed an unknown number of civilians walk around § 87(2)(b) on the sidewalk because § 87(2)(b) sat on the steps of the abandoned building with his feet on the sidewalk (Board Review 04-06). PO Woo did not observe any civilian walk around § 87(2)(b) prior to the officers' approach. Both Sgt. Vento and PO Woo stated that an unknown number of civilians walked around both the officers and § 87(2)(b) during their interaction because both the officers and § 87(2)(b) stood on the sidewalk. Neither Sgt. Vento nor PO Woo recalled whether these civilians interacted with the officers and § 87(2)(b) in any way. Sgt. Vento also did not recall whether any of these civilians was unable to walk past the incident location.

According to PL § 240.21, "a person is guilty of disorderly conduct when, with the intent to cause public inconvenience annoyance or alarm, or recklessly creating a risk thereof...he obstructs vehicular or pedestrian traffic" (Board Review 07). *People v. Gonzalez* and *People v. Baker* have also established that a violation of disorderly conduct can only arise once an interaction extends beyond the original disputants to incite "public harm" (Board Review 08 and 09).

§ 87(2)(g)

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§ 87(2)(g)

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date